

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL MURPHY,

Plaintiff,

MEMORANDUM AND ORDER

-against-

CV 10-0251 (LDW)(AKT)

SUFFOLK COUNTY COMMUNITY
COLLEGE and JOHN WILLIAMS,

Defendants.

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WEXLER, District Judge

By Order endorsed on April 29, 2011, the Court granted in part and denied in part defendants' motion to dismiss and reserved decision on defendants' motion to dismiss plaintiff's constructive discharge claim. The parties have submitted additional briefing on the constructive discharge claim.

Upon consideration, defendants' motion to dismiss the constructive discharge claim for failure to exhaust administrative remedies is denied. In his complaint in this action, plaintiff alleges, inter alia, that he retired on May 27, 2008, out of fear that he would lose his job and due to intolerable conditions resulting from discrimination and retaliation. While it appears that plaintiff did not expressly assert to the EEOC or NYSDHR that he was no longer employed at Suffolk County Community College and was pursuing a constructive discharge claim, his pro se allegations sufficiently asserted a hostile work environment, as evidenced by the Administrative Law Judge's Recommended Findings of Fact, Opinion and Decision, and Order, dated Nov. 20, 2009,

at 8. *See* Declaration of John Petrowski, dated October 7, 2010, Exh. E, at 8 (“To the extent that Complainant alleged that Respondent created a hostile work environment at his place of employment and that it existed because of his age”). Given plaintiff’s pro se status in the administrative proceedings, and the apparent assertion of a hostile work environment, the Court concludes that the purported constructive discharge claim is reasonably related to the claims made in the administrative proceedings. *See Fitzgerald v. Henderson*, 251 F.3d 345, 359-60 (2d Cir. 2001). Accordingly, defendants’ motion to dismiss the constructive discharge claim is denied.

SO ORDERED.

_____/s/_____
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
August 8, 2011